

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

**Sep 10, 2025**

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF WASHINGTON

ROBERT THEODORE KINNUNE,

Plaintiff,

v.

STATE OF WASHINGTON,  
WASHINGTON STATE  
DEPARTMENT OF SOCIAL  
AND HEALTH SERVICES,

Defendants,

No. 2:23-CV-00026-MKD

ORDER GRANTING  
DEFENDANTS' UNOPPOSED  
MOTION TO VACATE ORDERS  
ECF NOS. 187, 183 AND  
GRANTING MOTION TO  
EXPEDITE

**ECF Nos. 189, 191**

On September 9, 2025, the Court held a hearing on Defendants' Unopposed Motion to Vacate Orders, ECF No. 189. ECF No. 193. James Beck appeared on behalf of Plaintiff. Nicholas Ulrich appeared on behalf of Defendants. Defendants move the Court to vacate the Orders at ECF Nos. 183 and 187, awarding attorneys' fees and costs pursuant to 28 U.S.C. § 1447, as the parties have settled the underlying lawsuit. ECF No. 189 at 1. Plaintiff does not oppose the Motion, pursuant to his commitments under the settlement agreement. *See id.* at 1-2; ECF

No. 193. The Court has reviewed the motions and the record, has heard from counsel, and is fully informed. For the reasons explained below, and on the record, the Court grants Defendants' Motion to Vacate.

### **BACKGROUND**

The factual background underlying this matter was previously set forth in the Order Granting in Part Plaintiff's Motion for Attorneys' Fees, ECF No. 183, and the Order Granting Plaintiff's Motion for Reconsideration, ECF No. 187. The Court summarizes the history relevant to this motion.

At the pretrial conference on February 12, 2025, the Court found that it lacked subject matter jurisdiction and advised counsel it would entertain any motion for attorneys' fees notwithstanding the remand to state court. ECF No. 165. The Court referred the case to Magistrate Judge James A. Goeke for a second settlement conference at the parties' request, pending briefing on the fee issue. ECF No. 166. On February 21, 2025, the Court remanded the case to Thurston County Superior Court. ECF No. 174.

On February 26, 2025, Plaintiff filed a Motion for Attorneys' Fees and Costs. ECF No. 175. On February 27, 2025, the parties participated in a settlement conference before Magistrate Judge Goeke, which was unsuccessful. *See* ECF No. 172; ECF No. 190 at 2 ¶ 4.

On June 27, 2025, the Court granted Plaintiff's Motion for Attorneys' Fees

1 and Costs, ECF No. 175. ECF No. 183. On July 3, 2025, Plaintiff filed a Motion  
2 for Reconsideration, ECF No. 184, which the Court granted, ECF No. 187.

3 The parties have now reached a settlement agreement, which is designed to  
4 include attorneys' fees. ECF No. 190 at 2-3 ¶¶ 5-10.

### 5 LEGAL STANDARD

6 “On motion and just terms, [a] court may relieve a party or its legal  
7 representative from a final judgment, order, or proceeding” if “the judgment has  
8 been satisfied, released, or discharged; it is based on an earlier judgment that has  
9 been reversed or vacated; or applying it prospectively is no longer equitable.” Fed.  
10 R. Civ. P. 60(b)(5). “A motion under Rule 60(b) must be made within a reasonable  
11 time . . . .” Fed. R. Civ. P. 60(c)(1).

12 “[A] district court may vacate its own decision in the absence of extraordinary  
13 circumstances.” *Am. Games, Inc. v. Trade Prods., Inc.*, 142 F.3d 1164, 1168 (9th  
14 Cir. 1998). However, “a district court is not required to vacate a judgment pursuant  
15 to settlement because, otherwise, ‘any litigant dissatisfied with a trial court’s  
16 findings would be able to have them wiped from the books.’” *Bates v. Union Oil*  
17 *Co. of Cal.*, 944 F.2d 647, 650 (9th Cir. 1991) (quoting *Ringsby Truck Lines, Inc. v.*  
18 *W. Conf. of Teamsters*, 686 F.2d 720, 721 (9th Cir. 1982)); *see also Chem.*  
19 *Producers & Distribs. Ass’n v. Helliker*, 463 F.3d 871, 878 (9th Cir. 2006) (“Where  
20 mootness was caused by voluntary action of the party seeking vacatur, we generally

1 remand with instructions to the district court to weigh the equities and determine  
2 whether it should vacate its own judgment.” (quotation marks and citations  
3 omitted)), *overruled on other grounds by Bd. of Trs. of Glazing Health & Welfare*  
4 *Tr. v. Chambers*, 941 F.3d 1195 (9th Cir. 2019). In determining whether to vacate a  
5 judgment, a court must consider “‘the consequences and attendant hardships of  
6 dismissal or refusal to dismiss’ and ‘the competing values of finality of judgment  
7 and right to relitigation of unreviewed disputes.’” *Dilley v. Gunn*, 64 F.3d 1365,  
8 1371 (9th Cir. 1995) (quoting *Ringsby*, 686 F.2d at 722) (other citations omitted). A  
9 court must also consider “the motives of the party whose voluntary action mooted  
10 the case.” *Am. Games*, 142 F.3d at 1168.

## 11 DISCUSSION

12 Defendants timely move for relief from the Orders at ECF Nos. 183 and 187  
13 under Fed. R. Civ. P. 60(b) and Fed. R. Civ. P. 60(c)(1). Defendants assert that their  
14 obligation to pay attorneys’ fees and costs “has been rolled into and resolved as part  
15 of the settlement of the underlying award” and that “[t]he equities support vacating  
16 the award here.” ECF No. 189 at 2-3.

17 First, the consequences and hardships associated with vacatur weigh in favor  
18 of granting Defendants’ Motion. *See Dilley*, 64 F.3d at 1371. The parties have  
19 “compromised their respective positions, including whether an appeal would be  
20 appropriate from this fee award[,]” and thus reached a settlement agreement that

1 accounts for attorneys' fees and costs. ECF No. 189 at 3. "The Ninth Circuit is  
2 firmly committed to the rule that the law favors and encourages compromise  
3 settlements." *Ahern v. Cent. Pac. Freight Lines*, 846 F.2d 47, 48 (9th Cir. 1988)  
4 (quotation marks and citation omitted)); *see also Click Ent., Inc. v. JYP Ent. Co.*, No.  
5 CIV 07-342, 2009 WL 3030212, at \*2 (D. Haw. Sept. 22, 2009) ("[V]acating the  
6 Verdict and Amended Judgment was contemplated as part of settlement (though not  
7 made a condition of settlement), and thus the Court should, where appropriate,  
8 support the negotiations and terms of settlement." (citation omitted)).

9       Second, the competing values of finality of judgment and right to relitigation  
10 of unreviewed disputes weigh in favor of granting Defendants' Motion. *See Dilley*,  
11 64 F.3d at 1371. The proposed settlement will resolve the entire underlying case and  
12 preclude further review of any overlap between the award of fees and costs in this  
13 case and the settlement agreement's provisions for fees and costs. *See Click Ent.*,  
14 2009 WL 3030212, at \*3 (finding that this consideration favored vacatur of a  
15 judgment that may have permitted "double recovery" because the "settlement  
16 preclude[d] further review" of that issue).

17       Last, the motives of the party whose voluntary action mooted the case weigh  
18 in favor of granting Defendants' Motion. *See Am. Games*, 142 F.3d at 1168.  
19 Defendants represent that the February 2025 settlement conference, while  
20 unsuccessful, was the catalyst for further settlement discussions that ultimately led to

1 a successful settlement. ECF No. 190 at 2 ¶¶ 4-8. These settlement discussions  
2 began before the Court issued the Orders at ECF Nos. 183 and 187. *Id.* at 2 ¶¶ 5-7.  
3 Thus, vacatur of the award of attorneys' fees and costs does not appear to have been  
4 "the primary motive" for the settlement. *See Am. Games*, 142 F.3d at 1170.

5 Accordingly, **IT IS HEREBY ORDERED:**

6 1. Defendants' Unopposed Motion to Vacate Orders ECF Nos. 187, 183,  
7 **ECF No. 189**, is **GRANTED**.

8 2. Defendants' Motion to Expedite, **ECF No. 191**, is **GRANTED**.

9 3. The Order Granting in Part Plaintiff's Motion for Attorneys' Fees, **ECF**  
10 **No. 183**, and the Order Granting Plaintiff's Motion for Reconsideration, **ECF**  
11 **No. 187**, are **VACATED**.

12 **IT IS SO ORDERED.** The District Court Executive is directed to file this  
13 order and provide copies to counsel. This case **REMAINS CLOSED**.

14 DATED September 10, 2025.

15 s/Mary K. Dimke  
16 MARY K. DIMKE  
17 UNITED STATES DISTRICT JUDGE  
18  
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